

### 3. Entering Foster Care

Children enter foster care through court commitment based on an abuse or neglect petition; a CHINS (children in need of services) petition, an entrustment, delinquency, or a request for relief of care and custody and non-custodial agreements.

#### 3.1 Best Interests Of Child Requirements

The initial court order must contain language stating the child was removed from the home pursuant to a judicial determination that (i) continuation in the home would be contrary to the welfare of the child, or (ii) it is in the child's best interests to be placed in foster care, or (iii) there is no less drastic alternative than removal of the child from his or her home. Effective March 27, 2000, nunc pro tunc orders that amend original orders are not acceptable.

#### 3.2 Reasonable Efforts Requirements

Both federal (Adoption Assistance and Child Welfare Act of 1980, Public Law 96-272) and state law (§ 16.1-251, § 16.1-253, and § 16.1-278 of the *Code of Virginia*) require that reasonable efforts are made to prevent or eliminate the need for removal of the child from the home and to make it possible for the child to be returned home.

##### 3.2.1 Initial Judicial Determination of Reasonable Efforts

At the time of the initial court hearing to commit a child to the custody of the local department of social services, approve an entrustment agreement or approve the plan for placement through a non-custodial foster care agreement, a judicial determination must be made as to whether reasonable efforts have been made. In order for the court to determine whether reasonable efforts have been made to prevent removal, the local department of social services must document and submit the following to the court:

- Service needs of the child and family;
- Services offered to meet the needs;
- The family's participation in service planning; and
- The family's response to the services offered.

##### 3.2.2 Requirements for the Court Order

The *Code of Virginia* requires that the initial court order state that reasonable efforts have been made to prevent or eliminate the need for removal. To meet federal requirements, reasonable efforts must be documented in a court order within 60 days of entry into care or, for an entrustment or non-custodial placement, within six months of placement. Compliance with Virginia law will therefore assure compliance with federal regulations.

Effective March 27, 2000, nunc pro tunc orders that amend original orders are not acceptable.

### 3.2.3 Reasonable Efforts After a Local Department of Social Services Receives Custody or Accepts Placement

Annually, for every child in foster care, there must be a judicial determination that reasonable efforts have been made to either:

- Reunite the child with his or her prior family if return home is the goal, or
- Place the child in a timely manner in accordance with his or her permanency plan

Documentation of reasonable efforts to reunify the child and family or achieve a permanent placement for the child must be recorded on the initial 60-day service plan, in the record, and on reviews thereafter.

### 3.2.4 Reasonable Efforts Not Required

Agencies are not required to make reasonable efforts to reunite children with a parent when there is a documented risk to the child's safety or well being as determined by one or more of the following:

- The parental rights of a sibling of the child in foster care have been previously involuntarily terminated.
- The parent has been convicted of murder or voluntary manslaughter, or a felony attempt, conspiracy, or solicitation to commit such an offense against (i) a child of the parent, (ii) a child with whom the parent resided at the time of the offense, or (iii) the other parent of the child.
- The parent has been convicted of felony assault or bodily wounding resulting in serious bodily injury or felony sexual assault of: (i) a child of the parent or a child with whom the parent resided at the time of the offense, or (ii) based on clear and convincing evidence, the parent has subjected any child to aggravated circumstances, or abandoned a child under circumstances which would justify the termination of residual parental rights pursuant to [§16.1-283](#) (d).

- Serious bodily injury means bodily injury resulting in substantial risk of death, extreme physical pain, protracted or obvious disfigurement, or protracted loss or impairment of a bodily member, organ, or faculty.
- Aggravated circumstances means torture, chronic or severe abuse, or chronic or severe sexual abuse where the victim is (i) a child of the parent or a child with whom the parent resided at the time such conduct occurred and includes the failure to protect a child from such conduct where that conduct or failure to protect (i) demonstrates depraved indifference to human life, or (ii) resulted in the death of a child or serious bodily injury to a child. Chronic abuse or chronic sexual abuse means recurring acts of physical abuse that place the child's health, safety or well-being at risk. Severe abuse and severe sexual abuse may include an act or omission that occurred only once but meets the definition of "aggravated circumstances." (§16.1-281 (b) and §16.1-283 (e)).

If the local department of social services determines that reasonable efforts to reunify do not need to be made based on the felony convictions or circumstances listed in the five preceding paragraphs, the local department of social services must petition the court to make that determination. This petition may be filed at any court hearing. Within 30 days of the court's determination that reasonable efforts to reunify do not need to be made, the court shall hold a permanency planning hearing. If the request for such a determination is made at a permanency planning hearing, it will not be necessary to hold another hearing.

The court order must document that reasonable efforts to reunify are not required, because the parents have been convicted of offenses listed above or had parental rights of a sibling involuntarily terminated.

Neither law nor policy requires that reasonable efforts be omitted in these cases. Agencies may decide to make reasonable efforts to reunite children with parents even when a court has convicted parent(s) of the crimes listed above or the parental rights of a sibling have been involuntarily terminated. This decision should be made on a case-by-case basis.

### 3.2.5 When Children in Custody Remain in Their Own Home

In situations where custody is given to the local department of social services and the child remains in the home of the parent(s) or prior custodian, a judicial determination as to reasonable efforts to prevent removal is not necessary. However, if foster care placement becomes necessary, all of the legal requirements must be met.

## **3.3 Title IV-E Funding Restrictions**

Failure to meet requirements regarding best interests and reasonable efforts will result in the child being ineligible for Title IV-E funding. Additional criteria for establishing and

maintaining Title IV-E eligibility are explained in the Virginia Department of Social Services Title IV-E Eligibility Manual available at <http://www.dss.virginia.gov/family/fc/procedures.html> Placement costs for children found to be ineligible for Title IV-E funding must be paid from state pool funds.

### 3.4 Indian Child Welfare Act

Children of American Indian or Alaskan Eskimo heritage may be subject to the Indian Child Welfare Act. If a local department of social services suspects or knows that a child in foster care or one about to be placed in foster care is of American Indian or Alaskan Eskimo heritage, and the child belongs to a tribe located outside Virginia, the local department of social services must contact the tribe. A listing of recognized tribes and designated tribal representatives with addresses and phone numbers can be found on the Internet at [www.doi.gov/bureau-indian-affairs.html](http://www.doi.gov/bureau-indian-affairs.html) under the Bureau of Indian Affairs, Department of Interior. The local department must contact the tribal council about the child. If the child belongs to a Virginia tribe, the child is not subject to the Indian Child Welfare Act, and the local court has jurisdiction. However, when a child entering care is believed or known to have Virginia Indian heritage, the local department is urged to contact the Virginia Council on Indians and consider tribal culture and connections in the placement and care of the child.

### 3.5 Authority for Placement and Dispositional Alternatives

If reasonable efforts have been made and the child still needs to be temporarily placed in foster care, the local department of social services may accept placement through several legal alternatives. At each of the different types of court hearings concerning the child's health and safety, the court shall consider placement of the child with a relative or other interested individual as an alternative to foster care. Placements across state lines must comply with the Interstate Compact on Placement of Children. (Vol. VII, Section III, Chapter E)

The different types of court hearings are:

#### 3.5.1 Court Commitments

A child may be committed to the local board by an order of a court of jurisdiction. The court order must meet the reasonable efforts requirements of Section 3.2 of this chapter. The commitment must be made before the child is 18 years old. The different types of court hearings are:

##### *Emergency Removal Hearing (§16.1-251)*

An emergency removal order may be issued ex parte (defined as "hearings in which the court hears only one side of the controversy") by the court upon a petition supported by an affidavit or by sworn testimony in person before the judge or intake officer in situations where safety of the child precludes services to prevent removal, the judge may deem that reasonable efforts have been made.

In the emergency removal order, the court shall give consideration to temporary placement of the child with a relative or other interested individual, including grandparents. The local department of social services must supervise this placement, pending the preliminary removal hearing. If the local department of social services is providing supervision, a case record should be opened and maintained in the state approved computer database system.

As the initial court order, the emergency removal order must indicate that placement is in the child's best interest. (Refer to Section 3.1)

*Preliminary Removal Hearing (§16.1-252)*

This is a hearing where the court determines that a child who is alleged to be abused or neglected needs to be placed in foster care.

At this hearing, the court must find that reasonable efforts have been made to prevent removal and enter that finding on the preliminary removal order. In situations where safety of the child precludes services to prevent removal, the judge may deem that reasonable efforts have been made.

At the preliminary removal hearing, the court will hold an adjudication proceeding to determine whether the child was abused or neglected as defined in §16.1-228. The local department of social services, parents, or Guardian ad Litem (GAL) may request that adjudication not occur that day. The court must then schedule an adjudication hearing to occur within 30 days. The results of the adjudication must be entered on a court order.

The court will address child support at this hearing. (Refer to Section 5.6).

The court shall consider and may transfer temporary custody to a relative or other interested individual at the preliminary removal hearing if the court finds that the relative or other interested individual is:

- a) Willing and qualified to receive and care for the child;
- b) Willing to have a positive, continuous relationship with the child; and,
- c) Willing and able to protect the child from abuse and neglect.

If the court orders transfer of temporary custody to a relative or other interested individual, the order will provide for the initiation and completion of an investigation of the relative or other interested individual; and will require the local department of social services to continue supervision until disposition. The order will provide for compliance with any preliminary protective order and as appropriate, ongoing provision of social services to the child and temporary custodian.

At this hearing, the court must schedule a dispositional hearing to occur within 75 days and provide notice to those present to attend that hearing.

*Dispositional Hearing (§16.1-278.2)*

This hearing occurs within 75 days of the preliminary removal order hearing; the hearing that brought the child into care; or the date the child came into care if there was no previous hearing. At this hearing, the court will enter an order (foster care plan dispositional order- dc- 553) indicating what the disposition of the case will be. The court will also review the initial foster care service plan.

The dispositional order must include a statement as to whether reasonable efforts have been made to return the child home and that continuation in the home would be contrary to the welfare of the child, or that placement is in the best interests of the child, or that there is no less drastic alternative. If there has not been a previous order that states reasonable efforts were made to prevent or eliminate the need for removal, the final dispositional order must include a statement to this effect.

The court will schedule a foster care review hearing to occur within six months of this hearing to review progress in the case. The court will provide notice to those present to attend the next hearing.

The court shall consider the transfer of legal custody of the child to the relative or other interested individual at the dispositional hearing. The order granting legal custody to the relative or other interested individual shall be entered only upon a finding, based upon a preponderance of the evidence from the court directed investigation. The order shall state that the relative or other interested individual is:

- a) Willing and qualified to receive and care for the child;
- b) Willing to have a positive and continuous relationship with the child;
- c) Committed to providing a permanent suitable home for the child; and
- d) Willing and able to protect the child from abuse and neglect.

The court's order should further provide for, as appropriate, any terms and conditions which would promote the child's interest and welfare, court review of the placement, and provision of ongoing services based on the needs of the child and custodian. (§16.1-278.2)

### 3.5.2 Temporary Entrustment Agreement (§63.2-903, 16.1-277.01)

Parent(s) or guardians may voluntarily request that the local department of social services take custody of the child for a temporary period. In this case, the local board may accept the child through a temporary entrustment agreement for up to 180 days. Title IV-E eligibility can extend beyond 180 days only when the court approves the temporary entrustment within 180 days of placement and determines that the best interests and reasonable efforts requirements have been met.

Conditions for use of temporary entrustment agreements are:

- The primary goal of temporary entrustment agreements is to return the child home. A temporary entrustment agreement may also be used for purposes of adoption planning. It is not to be used where the goal for the child is other than return home or adoption planning.
- The agreement shall specify the rights and obligations of the child, the parent(s) or guardians and the local department of social services. It must include the responsibility of the parent(s) for financial support of the child and the authority of parent(s) and local department of social services for medical care of the child.
- Entrustments cannot be used for educational purposes or to make the child eligible for Medicaid.
- An entrustment cannot extend beyond the child's 18<sup>th</sup> birthday.
- Parent(s), prior custodians, or the local department of social services may terminate the entrustment agreement within ten days with written notice. The agreement is considered to be revoked unless the local department opposes the request and obtains a judicial decision that return is not in the child's best interest.
- There are two types of temporary entrustments, those issued for less than 90 days, and those issued for more than 90 days.

#### 3.5.2.1 Entrustments for Less than 90 Days

This type of entrustment is used when a situation related to the child or his/her family can be resolved within 90 days. Documentation of the plan for services is required. Use of the foster care service plan form is not required. The plan may be an identifiable part of the narrative, or a separate page attached to the agreement.

If the child does not return home within 90 days, the local department of social services must petition the court for a hearing to approve the service plan and entrustment by the 89<sup>th</sup> day after placement, (§16.1-277.01). A service plan must accompany the petition. The service plan must document that reasonable efforts have been made to prevent removal and to return the child home and that continuation in the home would be contrary to the welfare of the child.

If the local department of social services decides to terminate the entrustment and seek court commitment during the first 90 days, the local department must petition the court for custody and submit the service plan for approval.

Federal regulations allow Title IV-E eligibility for temporary entrustment cases that meet all other eligibility requirements for up to 180 days. However, if the entrustment goes beyond 90 days procedures in Section 3.5.2.2 must be followed. (§16.1-277.01)

### 3.5.2.2 Court Hearings to Approve Entrustments for More than 90 Days

The entrustment agreement must be approved by the court at a court hearing. The local department of social services must petition the court for approval within 30 days of signing the agreement and submit a service plan with the petition (§63.2-903, 16.1-277.01). The court must set a hearing to approve the entrustment agreement and the service plan within 45 days of receiving the petition of the local department. The service plan submitted must meet all requirements of Section 8 of this chapter.

There must be a judicial determination regarding best interests (See Section 3.1) and reasonable efforts (See Section 3.2) at the hearing approving the entrustment agreement. The initial court order form (foster care plan dispositional order) must state that continuation in the home would be contrary to the welfare of the child and that reasonable efforts have been made to prevent removal and obtain alternative permanent placement. A statement that it is in the child's best interest to be placed in foster care or that there is no less drastic alternative than removal of the child from his or her home can substitute for the "contrary to the welfare" statement. These requirements must be met for the child to continue to remain eligible for Title IV-E beyond 180 days.

At this hearing, the court must schedule a foster care review hearing to occur within six months and provide notice of this hearing to those present.

In accordance with requirements of the Code of Virginia, any court order transferring custody of an entrusted child to a relative or other interested individual shall be entered only upon a finding, based upon a preponderance of the evidence from a court directed investigation. The order shall state that the relative or individual is:

- a)Willing and qualified to receive and care for the child;
- b)Willing to have a positive and continuous relationship with the child;
- c)Committed to providing a permanent suitable home for the child; and,
- d)Willing and able to protect the child from abuse and neglect.

The court's order transferring custody to a relative or other interested individual will provide, if appropriate, any terms and conditions for the child's welfare, ongoing social services for the child and custodian, and court review of the child's placement. (§16.1-277.01.d1)

### 3.5.3 Permanent Entrustment Agreement

This agreement provides a method for the parent(s) to voluntarily relinquish parental rights and give the local department of social services authority to place the child for adoption. Policy governing the use of Permanent Entrustment Agreements begins in Section 9.5.5.4.



Federal regulations allow Title IV-E eligibility for children who enter care through a permanent entrustment agreement only when court approval is obtained within 180 days of placement. The court must make a judicial determination that placement is in the best interest of the child (See Section 3.1) and that reasonable efforts have been made.

Once the court approves the permanent entrustment agreement, all parental rights are terminated. The parent can no longer revoke the permanent entrustment agreement.

If a parent is incarcerated, the court may authorize the Department of Corrections to have the prisoner transported to provide necessary testimony in hearings related to child welfare. The testimony of prisoners can also be acquired using electronic video and audio communication systems or telephonic communication systems in lieu of a personal appearance if authorized by the court. (§ 16.1-276.3, § 16.1-93.1)

The adoption progress report must be submitted to the court within six months of the court's approval of the permanent entrustment.

#### 3.5.4 Relief of Care and Custody (§16.1-277.02 and §16.1-278.3)

Parents may request temporary or permanent relief of care and custody.

On receipt of a petition for relief of custody, the court must refer requests for relief to local departments initially for investigation and provision of services (§ 16.1-277.02). The intent of this requirement is to determine whether the provision of services will prevent placement.

At the hearing, the court will determine, based on evidence presented, including the report from social services, whether the parent should be relieved of custody. If permanent relief is requested, the court will determine whether, based on clear and convincing evidence, termination of parental rights is in the child's best interests. Parental rights can be terminated only upon a finding by the court that reasonable efforts have been made to prevent removal and that continued placement in the home would be contrary to the welfare of the child. (§16.1-277.02)

If a parent is incarcerated, the court may authorize the Department of Corrections to have the prisoner transported to provide necessary testimony in hearings related to child welfare. The testimony of prisoners can also be acquired using electronic video and audio communication systems or telephonic communication systems in lieu of a personal appearance if authorized by the court.

If relief is granted, the court will schedule a dispositional hearing within 75 days.

If permanent relief of custody is granted and termination of parental rights is ordered, the local department of social services will submit an adoption progress report to the court within six months of the hearing.

### 3.5.5 Non-Custodial Foster Care Placement

Parent(s) or guardians may enter into an agreement with the local department or Community Planning and Management Team (CPMT) designated public agency to voluntarily place a child under age 18 in foster care while retaining custody. Services to prevent the need for foster care placement must be offered and must be documented in the service plan. In emergency situations where services cannot be offered, the reasons must be recorded on the service plan.

Before choosing this placement alternative and entering into a non-custodial agreement, the local department of social services must assess and determine that:

- Leaving custody with the parent(s) or guardians is in the best interests of the child and will not place the child at risk; and
- The parent(s) or guardians will remain actively involved with the child during the placement.

These determinations must be documented on the Non-Custodial Foster Care Agreement. If these conditions do not exist, transferring custody to the local department of social services should be considered.

#### 3.5.5.1 The Non-Custodial Foster Care Agreement

The non-custodial foster care agreement must address the conditions for care and control of the child, and the rights and obligations of the child, parent(s) or guardians, and the local department of social services and include:

- The legal status of the child. With this agreement, the child would remain in the legal custody of the parent(s) or guardians;
- A statement that leaving custody with the parent(s) or guardians is in the best interests of the child and will not place the child at risk;
- A statement that this is a voluntary agreement between the parent(s) or guardians and the local department of social services; and that the child will be returned to the parent(s) or guardians if the agreement is revoked;
- A statement that a criminal background check, and child abuse/neglect central registry check must be completed on all adults in the home before the child can be returned home. A national background check and fingerprint information on the

biological parents must also be completed. National background checks and fingerprint information may be completed on all adults in the home. If these checks have not been completed prior to placement, the local department must submit fingerprint information within 3 calendar days of the placement. Results of the check may prohibit the return of the child and in such cases; results will be shared with the person on whom the check was completed. §63.2-901.1 of the Code of Virginia. (See Section 4.1.6 for a list of offenses considered to be a barrier to placement. The local department of social services is required to pay for state criminal background checks but may transfer the charges for national background check and fingerprint information to the adult upon whom the check is being completed (See Section 4.1.6 for a list of barrier crimes).

- A statement that if the parent wishes to revoke the agreement after the court approved the agreement, judicial approval for terminating the agreement must be obtained.
- A statement that the local department of social services has the right to seek judicial determination regarding custody of the child in a situation where the parent(s) or guardians revoke the agreement and the local department of social services opposes return of the child;
- Requirements of the parent(s) or guardians for financial support, including a statement that the case will be referred to the Division of Child Support Enforcement (DCSE);
- Authority of the parent(s) or guardians and the local department of social services in making medical care and treatment decisions;
- Expectations of the parent(s) or guardians during the placement, including a statement that the parent(s) or guardians will remain actively involved with the child during the placement;
- Expectations of the local department of social services providing services to the child;
- Visitation arrangements;
- The date of the placement;
- Other conditions for placement; and
- When the placement is an interstate placement, a statement pertaining to responsibility for return of the child if the placement agreement is revoked.

A copy of the agreement should be given to the parent(s) or guardians, to the placement provider, and be kept in the child's record.

3.5.5.2 Court approval of the plan for non-custodial foster care placement through a non-custodial agreement

The local department of social services or public agency designated by the CPMT or the FAPT must file a foster care plan with the Juvenile and Domestic Relations District Court within 60 days following the board or public agency's placement of the child unless the court, for good cause, allows an extension of time, which shall not exceed an additional 60 days. (§16.1-281.a)

The court must hold a hearing within 75 days of the child's initial foster care placement to review and approve the plan. (§16.1-281.c)

The court order must include statements that (i) reasonable efforts have been made to prevent the placement and (ii) that continuation in the home is contrary to the child's welfare, or it is in the child's best interest to be placed in foster care, or that there is no less drastic alternative than removal of the child from his or her home.

All foster care requirements must be met. Time frames for administrative panel reviews and hearings are based on the date of the initial non-custodial foster care placement. The foster care review hearing must occur within six months of the 75-day hearing, if the child remains in non-custodial foster care placement longer than six months. Refer to Section 10.1 for requirements pertaining to foster care reviews.

3.5.5.3 Other requirements

The case must be entered into SACWIS as a foster care case.

The case must be referred for Medicaid, Title IV-E screening and child support. Child support is to be addressed in the non-custodial agreement. Parents are responsible for paying support from the beginning of placement. (§63.2-909) Child support is to be based upon

the Division of Child Support Enforcement's guidelines available at <http://leg1.state.va.us/cgi-bin/legp504.exe?000+cod+20-108.2>

Maintenance and service costs for non-Title IV-E children will be paid from State Pool Funds.

When another public agency other than the local department of social services is the case manager and enters into the non-custodial foster

care agreement with the parent(s) or guardians, that agency is responsible for meeting the requirements of this section and all other foster care review requirements. The local department is responsible for providing consultation to the other agency on meeting these foster care requirements, and for assuring the case is entered in SACWIS.

If the LDSS agrees to the return of the child and all required conditions for the child's safe return are met, the child may be sent home on a home visit pending final court approval.